

STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE
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MEMORANDUM

TO: City and Town Fiscal Bodies

CC: County Auditors, County Council Members, and County Commissioners

FROM: Cheryl A.W. Musgrave, Commissioner *CWM*

DATE: July 23, 2008

SUBJECT: Pre-1977 Police & Firefighters' Pension

1. The intent of this memorandum is to provide answers to questions presented to the Department of Local Government Finance ("Department") on the state's assumption of the pre-1977 police and fire pensions.

2. Calculation of Levy Reduction.

Question: How will the State calculate the required local reduction of the maximum permissible ad valorem property tax levy for the amount of payment made in 2009 for benefits to members of the pre-1977 pension funds?

Answer: HEA 1001 (P.L. 146-2008), Section 840, effective on **July 1, 2008**, states that for property taxes first due and payable *after* December 31, 2008 (i.e., property taxes due and payable in 2009 and thereafter), the Department is required to reduce the maximum property tax levy of any civil taxing unit (e.g., city/town) and special service district by the amount of the payment to be made in 2009 by the state under IC 5-10.3-11, as amended by HEA 1001, for benefits to members (and survivors and beneficiaries of members) of the 1925 police pension fund, the 1937 firefighters' fund, or the 1953 police pension fund.

The Department interprets this section to require a levy reduction exactly equal to the *increase* in the state distribution to cities and towns paid for the local share of police and fire pensions in HEA 1001. For example, if a city was receiving \$25 from the state pension relief fund in 2008 (prior to HEA 1001) and now will receive an additional \$75 from HEA 1001 in 2009, for a total of \$100, the city's levy will be reduced by \$75. **Thus, the Department will reduce the maximum property tax levy by the amount of the increase in HEA 1001.** The Department has included an example attached to this memorandum as further explanation. *See attachment.*

3. Death Benefits

Question: Will the State assume the cost of a higher death benefit that was set by local decision or will these survivors potentially see a reduction in their benefit in order to meet the state maximum levy?

Answer: No. Prior to HEA 1001 (P.L. 146-2008), higher death benefits set by local decision were *not* included in the analysis of pension benefits paid in the previous year and allocated between pension relief and city share. The cities and towns were solely responsible for the incremental benefit, or higher death benefit. As a result, the previously adopted additional local death benefits will not be assumed by the state.

4. Administrative Costs & Deferred Retirement Option Plan (DROP) payments

Question: As part of the assumption by the State of the pension obligations, will the State permit administrative costs to be included in the assumed amount?

Answer: No, the state will *not* assume the administrative costs. HEA 1001, Section 840 is clear that the Department is to reduce the maximum levy by the amount of the payment to be made in 2009 by the state for **benefits** to members (and survivors and beneficiaries of members) of the 1925 police pension fund, the 1937 firefighters' fund, or the 1953 police pension fund. The Department interprets the term "benefits" to exclude administrative costs. The state will assume the DROP obligations. See IC 36-8-8.5.

5. Mechanics and Timing

Question A: What information will be expected from local units annually with regards to the assumption of pre-1977 pension obligations?

Answer: For the next reporting year, all reporting will be done through PERF Online. Each city and town will log into PERF Online and either update the information submitted to PERF last year or upload a new file. A sample of the information that will be requested by PERF is available on the PERF website under the "Pension Relief" section of the '77 Fund. PERF anticipates additional communications about the process and other key information will be made available in the upcoming months. PERF plans on having a communication ready for the Pension Secretary Seminar, which is usually held in November of each year.

Question B: What deadlines will have to be met?

Answer: Deadlines will be set by PERF and as part of the overall communication plan. It remains that each unit of local government must certify to PERF the information pursuant to IC 5-10.3-11-4.

Question C: Who can locals contact with questions?

Answer: The PERF Call Center will be the contact source: 1-888-526-1687 or 317-233-4162. PERF anticipates releasing communications of how funds will be transferred under the pension relief regulations.

Question D: What are the plans for the timing of distributions to local units?

Answer: Under IC 5-10.3-11-4, distributions will be made in two (2) equal installments before July 1 and October 2 of each year.

6. Property Tax Levy Controls

Question A: What are the new levy limitations on a Fire Protection Territory?

Answer: For property taxes first due and payable in 2009, any property taxes imposed by a civil taxing unit for fire protection services within a fire protection territory that are exempted from the property tax levy limits may *not* increase annually by a percentage greater than the result of:

- (1) the assessed value growth quotient (AVGQ) determined (i.e., 4% for 2009); *minus*
- (2) one (1).

On June 24, 2008, the State Budget Agency calculated the AVGQ pursuant to I.C. 6-1.1-18.5-2(b) for property tax levies due and payable in CY 2009. The AVGQ for CY 2009 is 4.000%.

Question B: Does the legislation limit the levy growth to the statewide levy growth?

Answer: Yes. Increases to the levy are limited to the average statewide levy increase. IC 6-1.1-18.5-2 contains the AVGQ calculation. The AVGQ is based upon the following: each of the six (6) calendar years immediately prior to the year in which a budget is adopted for the following calendar year, divide the Indiana nonfarm personal income for the calendar year by the Indiana nonfarm personal income for the calendar year immediately preceding that calendar year, rounding to the nearest one-thousandth (0.001).

Question C: Is the levy still outside the maximum levy limitations?

Answer: No. As discussed above, starting in 2009, any property taxes imposed by a civil taxing unit for fire protection services within a fire protection territory that are exempted from property tax levy limits may *not* increase annually by a percentage greater than the result of:

- (1) the assessed value growth quotient (4% for 2009); *minus*
- (2) one (1).

Question D: In a few places, the legislation refers to a levy being limited to the assessed valuation growth quotient (AVGQ) minus one (1)?

Answer: The mathematical expression for the AVGQ includes a factor for the base of 100 plus the percent change. For example, if the AVGQ is 1.04, this actually is indicating a four percent (4%) increase over a base of 100. The Department has interpreted the language to of “minus one (1)” to mean minus the base of 100. Thus, the AVGQ for 2008 of 1.04 *minus* one (1) equals the growth factor of 4%.

Question E: Is this just another way of saying the growth factor?

Answer: See above.

7. Procedures for Issuance of Bonds and Other Evidences of Indebtedness by Political Subdivisions

Question: What is the definition of “total gross assessed value” in reference to determining if a project is controlled? Are TIF and deductions included or excluded?

Answer: “Total gross assessed value” is not defined in Title 6 of the Indiana Code. However, IC 6-1.1-1-3 defines “assessed value” or “assessed valuation” as an amount equal to, for assessment dates after February 28, 2001, the true tax value of property. Thus, the Department has determined “total gross assessed value” for purposes of the referendum and remonstrance / petition process in IC 6-1.1-20 means the assessed value of a political subdivision (e.g., school district) before TIF and any deductions or exemptions are subtracted from the assessed value.

Please note the definition of “gross assessed value” in IC 6-1.1-20.6-1.6 for purposes of the circuit breaker is different than the definition of “total gross assessed value” referred to above. For purposes of the circuit breaker, “gross assessed value” refers to the assessed value of property after the application of all exemptions under IC 6-1.1-10 or any other provision, not deductions.

8. Circuit Breakers

Question A: What happens if income tax dollars are pledged to another bond issue? Does that change the payment priority?

Answer: Income taxes that have already been pledged to make debt payments may not be diverted. Existing contracts should prevail. However, income taxes that may be available after satisfying contractual obligations may be a source for other bonds depending on the bond covenants. Check with your bond counsel.

HEA 1001, Section 226 added IC 6-1.1-20.6-10 to the Indiana Code, **effective on July 1, 2008**. The law requires cities and towns to fully fund the payment of their debt obligations in an amount sufficient to pay any debt service or lease rentals on outstanding obligations, regardless of any reduction in property tax collections due to the application of circuit breaker tax credits.

Any reduction in collections must be applied to the other funds of the city or town after debt service or lease rentals have been fully funded.

Question B: How will debt service levies be excluded in computing the circuit breaker tax credit in Lake and St. Joseph counties?

Answer: HEA 1001, Section 222 amended IC 6-1.1-20.6-7, **effective as of January 1, 2008 (retroactive)** for property taxes first due and payable in 2009. Property taxes imposed in Lake and St. Joseph counties to pay debt service or make lease payments for bonds or leases issued or entered into before July 1, 2008 are not considered for purposes of calculating a person's Circuit Breaker credit. A taxpayer's total tax liability will equal the gross tax *minus* the Circuit Breaker limit *plus* the tax associated with the excluded levies. In other words, the Circuit Breaker credit amount will be reduced by the tax associated with the excluded levies.

9. Appropriation from State General Fund to Pension Relief Fund.

Question: How much has been appropriated from the state general fund to the pension relief fund for the period beginning July 1, 2008 and ending on June 30, 2009?

Answer: HEA 1001, Section 838, **effective on July 1, 2008**, is a non-Indiana Code provision that appropriates from the state general fund to the pension relief fund for the period beginning July 1, 2008 and ending June 30, 2009, **\$48,611,000** for the payment of pension, disability, and survivor benefits. This provision expires on July 1, 2009.

This appropriation is in addition to that already adopted for the existing state obligations relating to pension relief.

10. Pension Management Oversight Commission.

Question: What are the duties of the Pension Management Oversight Commission?

Answer: HEA 1001, Section 839, **effective on March 19, 2008**, requires the pension management oversight commission, established under IC 2-5-12, to:

a. study issues related to the payment of benefits under the 1925 police pension fund (IC 36-8-6), the 1937 firefighters' pension fund (IC 36-8-7), and the 1953 police pension fund (IC 36-8-7.5) by the state of Indiana; and

b. report the commission's findings in writing to:

(1) the budget committee; *and*

(2) the legislative council in an electronic format under IC 5-14-6.

11. Pension Relief Fund -- Distribution; Formula.

Question: *What are the procedures for monies to be paid from the pension relief fund annually by PERF?*

Answer: HEA 1001, Section 35 amended IC 5-10.3-11-4, **effective on January 1, 2009**. Monies from the pension relief fund must be paid annually by PERF under the procedures specified below:

a. Each year, **before a date set by the state board [April 1 deadline is repealed]**, each unit of local government must certify to the state board:

(1) the amount of payments made during the preceding year for benefits under its pension funds covered by IC 5-10.3-11 [public relief fund chapter], referred to in this section as "pension payments";

(2) the data determined necessary by the state board to perform an actuarial valuation of the unit's pension funds covered by IC 5-10.3-11 [public relief fund chapter];

(3) the names required to prepare the list [i.e., list of all police officers and firefighters, active, retired, and deceased if their beneficiaries are eligible for benefits, who are members of a police or fire pension fund that was established before May 1, 1977]; and

(4) **any other information that is necessary for the state board to make distributions to units under IC 5-10.3-11 [public relief fund chapter].**

-- A unit is ineligible to receive a distribution if it does *not* supply the complete required information or a substantial amount of the required information if it is accompanied by an affidavit of the chief executive officer of the unit detailing the steps which have been taken to obtain the information and the reasons the complete information has not been obtained **[April 1 deadline repealed]**.

b. Each year, **before a date set by the state board**, the state board must prepare a list of all police officers and firefighters, active, retired, and deceased if their beneficiaries are eligible for benefits, who are members of a police or fire pension fund that was established before May 1, 1977 **[July 1 deadline repealed]**. The list may *not* include police officers, firefighters, or their beneficiaries for whom no future benefits will be paid. The state board must then compute the present value of the accrued liability to provide the pension and other benefits to each person on the list.

c. Each year, **before a date set by the state board**, the state board must determine the total pension payments made by all units of local government for the preceding year and must estimate the total pension payments to be made to all units in the calendar year in which the July 1 occurs and in the following calendar year **[July 1 deadline repealed]**.

d. HEA 1001 repealed the distribution formula.

12. Additional Distributions.

Question: What is PERF required to distribute from the pension relief fund to each local unit? When are the distributions to be made?

Answer: HEA 1001, Section 36 amended IC 5-10.3-11-4.7, **effective on January 1, 2009. In 2009 and each year thereafter**, PERF must distribute from the pension relief fund to each unit of local government the total amount of pension, disability, and survivor benefit payments from the 1925 police pension fund (IC 36-8-6), the 1937 firefighters' pension fund (IC 36-8-7), and the 1953 police pension fund (IC 36-8-7.5) to be made by the unit in the calendar year, as estimated by PERF under IC 5-10.3-11-4, after subtracting any distributions to the unit from the public deposit insurance fund that will be used for benefit payments. PERF must make the distributions in two (2) equal installments before July 1 and before October 2 of each year.

13. Indiana State Lottery – Administrative Trust Fund; Transfer of Surplus Revenue.

Question: Does the pension relief fund receive any money from the state lottery?

Answer: Yes. HEA 1001, Section 16 amended IC 4-30-16-3, **effective on January 1, 2009.** The state lottery commission is required to transfer the surplus revenue in its administrative trust fund, before the last business day of January, April, July, and October, **\$7,500,000** of the surplus revenue to the State Treasurer for deposit in the pension relief fund (IC 5-10.3-11).

14. Bond Anticipation Notes.

Question: Can a county, city, or town issue bonds, notes, or other obligations for the purpose of providing funds to pay pension benefits for police and fire pension funds?

Answer: No, not *after* July 1, 2008. HEA 1001, Section 30, **effective on July 1, 2008**, amended IC 5-1-14-15, to state that ***before* July 1, 2008** a county, city or town may issue bonds, notes, or other obligations for the purpose of providing funds to pay pension benefits under IC 36-8-6 [1925 police pension fund], IC 36-8-7 [1937 firefighters' pension fund], or IC 36-8-7.5 [1953 police pension fund (Indianapolis)]. Thus, this amendment prohibits, ***after* July 1, 2008**, a county, city, or town from issuing bonds, notes, or other obligations for the purpose of providing funds to pay pension benefits for the 1925 police pension fund, 1937 firefighters' pension fund, or the 1953 police pension fund (Indianapolis).

If you have any questions about this memorandum, please contact your budget field representative. If you do not know your budget field representative, please go to the Department's Web site at:

http://www.in.gov/dlgf/files/Budget_Field_Staff_Assignments_and_Numbers.pdf.

Attachment:

City Pension Revenues Example (1 page)

City Pension Revenues Example

	<u>2007</u>	<u>2008</u>
State Pension Distributions	\$ 100.00	\$ 150.00 (1)
Property Tax Levy for Pensions	<u>100.00</u>	<u>\$ 53.70</u> (2)
Total available for pensions	<u>\$ 200.00</u>	<u>\$ 203.70</u>

NOTES:

- 1) \$50 represents the increase in state distribution to the City resulting from HEA 1001-2008.
- 2) Property tax levy receives levy growth percentage increase on the 2007 levy amount. Levy is then decreased by the 2008 state increase in distribution due to HEA 1001-2008.

Prop Tax Levy in 2007	\$100.00
Growth factor for CY2008	<u>1.037</u>
Prop Tax Levy for 2008	\$ 103.70
Less increase in State distribution per HEA 1001-2008	<u>\$ (50.00)</u>
Net Property Tax Levy for 2008	<u>\$ 53.70</u>